

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT DAYTON**

FAITH DISBENNETT,

Case No. 3:-08-cv-041

Plaintiff,

-vs-

**District Judge Thomas M. Rose
Chief Magistrate Judge Michael R. Merz**

MILLCRAFT PAPER COMPANY

Defendant.

**ENTRY AND ORDER OVERRULING DISBENNETT'S OBJECTIONS
(Doc. #20) TO THE CHIEF MAGISTRATE JUDGE'S REPORT AND
RECOMMENDATIONS (Doc. #18); ADOPTING THE CHIEF
MAGISTRATE JUDGE'S REPORT AND RECOMMENDATIONS (Doc.
#18) IN ITS ENTIRETY AND TERMINATING THIS CASE**

This matter is before the Court pursuant to Plaintiff Faith Disbennett's ("Disbennett's") objections (doc. #20) to Chief Magistrate Judge Merz's Report and Recommendations (doc. #18). Defendant Millcraft Paper Company ("Millcraft") has responded to Disbennett's Objections (Doc. #21) and the matter is now ripe for decision.

Chief Magistrate Judge Merz recommends that Millcraft is entitled to judgment as a matter of law on Disbennett's discrimination claims under the ADA and Ohio law because, according Disbennett's Complaint, she admits that she had a relapse with respect to her illegal drug use, that she failed the January 2007 drug test and that, as a result, Millcraft terminated her employment. Chief Magistrate Judge Merz recommends that Millcraft is entitled to judgment as a matter of law on Disbennett's FMLA claim because incarceration, the true reason for her absence from work is not a qualifying reason for FMLA leave. Finally, Chief Magistrate Judge

Merz recommends that Millcraft is entitled to judgment as a matter of law on Disbennett's intentional-infliction-of-emotional-distress claim because Millcraft's conduct in terminating her employment was not "extreme and outrageous."

The District Judge has made a de novo review of the record on this matter pursuant to 28 U.S.C. § 636(b) and Fed.R.Civ.P. 72(b). Upon consideration of the foregoing, the Court finds that Disbennett's Objections are not well-taken and they are hereby OVERRULED. The Chief Magistrate Judge's Report and Recommendations is ADOPTED in its entirety.

Millcraft is granted judgment on the pleadings and judgment is to be entered in favor of Millcraft and against Disbennett. Disbennett's Complaint is DISMISSED WITH PREJUDICE. The captioned cause is hereby ordered terminated upon the docket records of the United States Court for the Southern District of Ohio, Western Division at Dayton.

DONE and **ORDERED** in Dayton, Ohio, this Nineteenth day of September, 2008.

s/Thomas M. Rose

THOMAS M. ROSE
UNITED STATES DISTRICT JUDGE

Copies furnished to:

Counsel of Record